



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2010 REGULAR SESSION

---

HOUSE BILL NO. 287

---

TUESDAY, MARCH 16, 2010

---

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE April 13, 2010  
10:17pm  
\_\_\_\_\_  
TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adley

AN ACT relating to economic development.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1        ➔ Section 1. KRS 154.22-050 is amended to read as follows:

2        The authority may enter into, with any approved company, a tax incentive agreement with  
3        respect to its economic development project, upon adoption of a resolution authorizing  
4        the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth  
5        below, the terms and provisions of each tax incentive agreement shall be determined by  
6        negotiations between the authority and the approved company.

7        (1) The tax incentive agreement shall set forth the maximum amount of inducements  
8        available to the approved company for recovery of the approved costs authorized by  
9        the authority and expended by the approved company.

10       (2) The approved company shall expend the authorized approved costs for the  
11       economic development project within three (3) years of the date of the final  
12       approval by the authority.

13       (3) The approved company shall provide the authority with documentation as to the  
14       expenditures for approved costs in a manner acceptable to the authority.

15       (4) (a) The term of the tax incentive agreement shall commence upon the activation  
16       date and ~~shall~~~~will~~ terminate upon the earlier of the full receipt of the  
17       maximum amount of inducements by the approved company or fifteen (15)  
18       years after the activation date unless paragraph (b) of this subsection applies.

19       (b) 1. An approved company may request an extension of the fifteen (15)  
20       year term as provided in this paragraph. The extension may be  
21       granted by the authority for up to ten (10) years under the following  
22       conditions:

23       a. The approved company commits to an additional investment or  
24       the creation of additional jobs at the approved economic  
25       development project;

b. The approved company consolidates operations, facilities, or services currently located in another state to the Kentucky facility;

c. At the time the extension is granted, the approved company has used less than sixty percent (60%) of the inducements awarded under the tax incentive agreement; and

d. The authority shall not increase the maximum amount of incentives established by the existing tax incentive agreement.

2. If the authority approves the extension, the tax incentive agreement shall be amended as necessary to extend the term, and to incorporate any additional requirements established by the authority as required by this paragraph.

(5) The tax incentive agreement shall include the activation date. To implement the activation date, the approved company shall notify the authority, the Department of Revenue, and the approved company's employees of the activation date when the implementation of the inducements authorized in the tax incentive agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- 1 (6) The tax agreement shall also state that if the total number of new full-time  
2 employees at the site of the economic development project who are residents of the  
3 Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at  
4 any time after activation, the authorized inducements shall be suspended for a  
5 period of up to one (1) year. If the company does not have at least fifteen (15) new  
6 full-time employees at the site who are residents of the Commonwealth and subject  
7 to Kentucky income tax within one (1) year from the date of the initial suspension,  
8 the inducements may be terminated at the discretion of the authority.
- 9 (7) The approved company shall comply with the hourly wage criteria set forth in KRS  
10 154.22-040(4) and provide documentation in connection with hourly wages paid to  
11 its full-time employees hired as a result of the economic development project in a  
12 manner acceptable to the authority.
- 13 (8) The approved company may be permitted the following inducements during the  
14 term of the tax incentive agreement:
- 15 (a) A one hundred percent (100%) credit against the Kentucky income tax and the  
16 limited liability entity tax imposed under KRS 141.0401 that would otherwise  
17 be owed in the approved company's fiscal year, as determined under KRS  
18 141.347, to the Commonwealth by the approved company on the income,  
19 Kentucky gross receipts, or Kentucky gross profits of the approved company  
20 generated by or arising from the economic development project. The ordering  
21 of the credits shall be as provided in KRS 141.0205; and
- 22 (b) The aggregate assessments withheld by the approved company in each year.
- 23 (9) The credit allowed the approved company shall be applied against both the income  
24 tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax  
25 imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for  
26 the fiscal year for which the tax return of the approved company is filed. The total  
27 inducements may not exceed authorized cumulative approved costs paid by the

1 approved company in the period commencing with the date of final approval.

2 (10) The approved company shall not be required to pay estimated tax payments as  
3 prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross  
4 receipts or Kentucky gross profits generated by or arising from the economic  
5 development project.

6 (11) The tax incentive agreement may be assigned by the approved company only upon  
7 the prior written consent of the authority following the adoption of a resolution by  
8 the authority to that effect.


9 (12) The tax incentive agreement shall provide that if an approved company fails to  
10 comply with its obligations under the tax incentive agreement then the authority  
11 shall have the right, at its option, to:

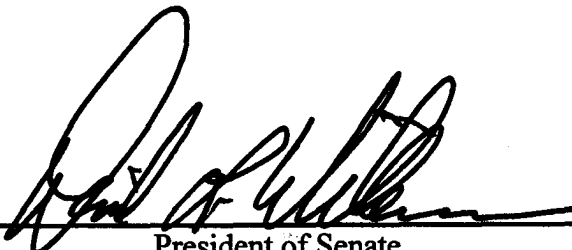
12 (a) Suspend the tax credits and assessments available to the approved company;

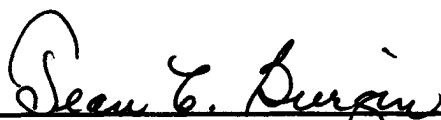
13 (b) Pursue any remedy provided under the tax incentive agreement, including  
14 termination thereof; and

15 (c) Pursue any other remedy at law to which it may be entitled.

16 (13) All remedies provided in subsection (12) of this section shall be deemed to be  
17 cumulative.

  
\_\_\_\_\_  
Speaker-House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date April 13, 2010